STATE OF MICHIGAN

COURT OF APPEALS

TRINITY SOLUTIONS SERVICES, INC.,

Plaintiff-Appellant,

v

MEADOWBROOK, INC. and MEADOWBROOK INSURANCE AGENCY,

Defendants-Appellees.

UNPUBLISHED
August 4, 2009

No. 285069
Saginaw Circuit Court
LC No. 07-064511-NZ

Before: Owens, P.J., and Servitto and Gleicher, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court opinion and order granting defendants summary disposition pursuant to MCR 2.116(C)(10). We affirm, and decide this appeal without oral argument in conformity with MCR 7.214(E).

Plaintiff is an employee staffing company that provides services in several states. In August 2006, plaintiff secured workers compensation coverage from defendants. Shortly after the insurance took effect, some of plaintiff's Georgia employees suffered injuries and submitted claims for compensation. Plaintiff then discovered that its policy did not include coverage for the state of Georgia. Because plaintiff had to defend the claims, it sued defendants for negligence, breach of contract, and fraud.

Defendants moved for summary disposition, asserting that plaintiff's former Chief Financial Officer, Clark Hedley, undisputedly had instructed it to include only Michigan, Kansas, and Arizona in the policy. According to attached deposition testimony by Kathleen Bianculli, an account manager for defendants, she helped collect the necessary policy information. Bianculli testified that on August 22, 2006, she met with Hedley and Anthony Essex, plaintiff's owner, who initially informed her that the states requiring coverage included Georgia. However, Bianculli averred that during the afternoon of August 23, 2006, she had several telephone conversations with Hedley during which he instructed her to remove Georgia from the list of covered states and replace it with Kansas. Notes made by Bianculli on August 24, 2006 show that "per Clark [Hedley]," she crossed Georgia off the list states covered in the policy. When Bianculli emailed Hedley the final client list on August 30, 2006, together with the rates for each classification arranged by state, the attachment listed only Michigan, Arizona

and Kansas as covered states. Hedley's deposition testimony confirmed Bianculli's recollections to the extent he could remember; he stated he did not recall discussing Georgia at all.

Plaintiff's response emphasized two undisputed facts: that the written documentation established that plaintiff initially requested coverage for Georgia, and that Hedley did not recall discussing Georgia with Bianculli. Plaintiff maintained that Bianculli's and Hedley's testimony conflicted, giving rise to a material question of fact. After a hearing, the circuit court entered an opinion and order granting defendant's motion, offering the following explanation:

> Kathleen Bianculli has testified that Clark Hedley instructed her to remove Georgia from the list of covered states. Contrary to Plaintiff's assertions, Hedley has never refuted this testimony. Rather, Hedley has testified that, while he does not recall a conversation with Bianculli regarding Georgia, he did believe that Arizona and Kansas were the only states where Plaintiff had employees. Hedley did testify that he knew Plaintiff had built buildings in Georgia, but never testified that he knew Plaintiff had employees in Georgia.
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> Further, Defendant has backed up Bianculli's testimony with the August 30 email, which provides a "final client list" and includes the insurance codes of Michigan, Arizona, and Kansas, but *not* Georgia.
>
> Plaintiffs [sic] have failed to show that a genuine issue of material fact exists here. None of Plaintiff's arguments, and none of Hedley's testimony, assert that the alleged conversation never took place. Rather, Bianculli's testimony and the follow-up email show that the conversation did take place, and Hedley's statements that he does not remember the conversation do not refute this.
>
> The Court finds that Plaintiff has failed to create any genuine issue of material fact, and therefore summary disposition of Plaintiff's claim is appropriate.

Plaintiff now challenges the circuit court's summary disposition ruling, which we review de novo. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of fact exists to warrant a trial." *Id.* If the moving party supports its position with evidence, "[t]he burden then shifts to the opposing party to establish that a genuine issue of fact exists." *Quinto v Cross & Peters, Inc*, 451 Mich 358, 362; 547 NW2d 314 (1996). "If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted." *Id.*

After carefully reviewing the attached depositions of Bianculli, Essex and Hedley and the other documentary evidence, we detect no error in the circuit court's analysis. Defendants do not dispute that the workers compensation policy initially was to include Georgia. But Bianculli repeatedly testified that Hedley advised her on the afternoon of August 23, 2006 to delete Georgia from the policy, and her version of events found support in her documented notes. Hedley expressed several times in his deposition his belief that plaintiff did not have employees in Georgia in August 2006; the mere fact that Hedley did not specifically recall speaking with

Bianculli about Georgia does not equate to a protestation that no such conversation took place. Because plaintiff simply presented no evidence giving rise to a reasonable inference that the conversation between Hedley and Bianculli did not take place, the circuit court correctly granted defendants' motion.

Affirmed.

/s/ Donald S. Owens
/s/ Deborah A. Servitto
/s/ Elizabeth L. Gleicher